

1 Laura A. Schroeder, ISB #3799
James Browitt, ISB #9016
2 Schroeder Law Offices, P.C.
1915 N.E. Cesar E. Chavez Boulevard
3 Portland, Oregon 97212
PHONE – (503) 281-4100 FAX – (877) 600-4971
4 counsel@water-law.com

5 *Attorneys for Weitz & Company, Inc.*

6
7
8 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
9 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

10 In Re SRBA
11 Case No. 39576

Subcases No. 61-248 and 61-10419

12 **RESPONSE TO VERIFIED PETITION**
13 **FOR DECLARATORY JUDGMENT**

14 On October 2, 2020, Mountain Home Irrigation District (“MHID”) filed its Petition for
15 Declaratory Judgment (“Petition”). COMES NOW Weitz & Company, Inc. (“Weitz”) by and
16 through its counsel of record, Schroeder Law Offices, P.C., and files this Response to Petition for
17 Declaratory Judgment (“Response”), pursuant to the Court’s *Final Unified Decree, Idaho Rule of*
18 *Civil Procedure 57* and Idaho Code § 10-1201 *et seq.*

19 **I. INTRODUCTION**

20 1. Weitz admits Water Right 61-248 was decreed by the Elmore County District
21 Court in 1914 and affirmatively alleges that MHID incorporated Water Right 61-248 into its
22 Water Right Claim 61-10419 without authorization of Weitz or its predecessor and denies the
23 remaining portions of Paragraph 1.

24 **II. PARTIES**

25 2. Weitz admits the allegations in Paragraph 2.



1 3. As to Paragraph 3, Weitz admits: (1) it is an Idaho corporation in good standing
2 with the Secretary of State; (2) its registered agent's address is 1900 W. Main St., Boise, Idaho
3 83702; (3) it owns property located in Elmore County and is a shareholder in MHID; and (4) it
4 owns lands irrigated by Water Right No. 61-248, and denies Weitz has ceased to irrigate lands
5 described for use under Water Right No. 61-248.

6 III. JURISDICTION AND VENUE

7 4. As to Paragraph 4, Weitz admits jurisdiction as to MHID's Petition Count I and
8 denies jurisdiction as to MHID's Petition Count II.

9 5. As to Paragraph 5, Weitz admits this Court has subject matter jurisdiction over
10 allegations related to the *Final Unified Decree* but denies this Court has subject matter
11 jurisdiction over contractual disputes, including those identified by Judgment of the Elmore
12 County District Court in *Mountain Home Irr. Dist. v. Bennett* (Case No. 220).

13 6. As to Paragraph 6, Weitz admits Water Right No. 61-248 was not partially
14 decreed by this Court and affirmatively alleges that MHID acted without authorization from
15 Weitz or its predecessor to incorporate Water Right 61-248 into Water Right 61-10419, and
16 denies this matter principally involves the validity of said right.

17 7. As to Paragraph 7, Weitz admits to this District Court's general jurisdiction, but
18 denies this District Court's jurisdiction and venue for the Elmore County District Court's
19 Judgment and the contractual obligations stated therein.

20 IV. STATEMENT OF FACTS

21 8. As to Paragraph 8, Weitz admits MHID delivers water for irrigation use to its
22 district members, including providing water delivery to district members receiving irrigation
23 water delivery as partially decreed by this Court in the Snake Basin River Adjudication
24 ("SRBA"). Weitz denies MHID possesses the entire ownership interest of Water Right No. 61-
25 10419 and denies the remaining allegations lacking sufficient knowledge as to the information's
26 truth or falsity.



1 9. As to Paragraph 9, Weitz admits Water Right No. 61-248 was decreed by Elmore
2 County District Court on July 30, 1914 in *Bennett v. Norse* and said right is identified in the
3 Canyon Creek Decree resulting from that litigation. Weitz admits that the source, rate, duty,
4 beneficial use, and place of use adjudicated in the Canyon Creek Decree under Water Right No.
5 61-248 was recognized, incorporated, and superseded by the SRBA *Final Unified Decree*.

6 10. Weitz admits the factual elements related to Water Right No. 61-248 were
7 incorporated in the SRBA *Final Unified Decree* as adjudicated in the Canyon Creek Decree,
8 except for record title, affirmatively alleging that MHID now holds the legal water right title for
9 superseded Water Right No. 61-248 in trust for the Weitz lands and denies the remaining
10 allegations of Paragraph 10.

11 11. Weitz admits the allegations in Paragraph 11.

12 12. As to Paragraph 12, Weitz admits MHID is the successor-in-interest to the
13 Mountain Home Co-Operative Irrigation Company ("Co-Op").

14 13. Paragraph 13 contains quotations from documents available in the record which
15 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
16 reason it is without sufficient information as to Paragraph 13's truth or falsity.

17 14. Weitz denies allegations contained within Paragraph 14.

18 15. Paragraph 15 contains quotations from documents available in the record which
19 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
20 reason it is without sufficient information as to Paragraph 15's truth or falsity.

21 16. Paragraph 16 summarizes contents of documents available in the record which
22 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
23 reason it is without sufficient information as to Paragraph 16's truth or falsity.

24 17. Weitz admits the allegations in Paragraph 17 but affirmatively alleges that such
25 information is set out in sections 1 and 2 of a contract between the Co-Op and Flora Bennett
26 dated October 15, 1923 ("Bennett Contract") which document speaks for itself.



1 18. Weitz admits the Co-Op granted Flora Bennett a contractual right to a certain
2 volume of storage with a right of delivery from the Co-Op in exchange for the Co-Op's use and
3 enlargement of an existing canal located on Flora Bennett's property as set out in the Bennett
4 Contract which speaks for itself, and denies the remaining allegations of Paragraph 18.

5 19. Paragraph 19 summarizes contents of documents available in the record which
6 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
7 reason it is without sufficient information as to truth or falsity.

8 20. Paragraph 20 summarizes contents of documents available in the record which
9 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
10 reason it is without sufficient information as to truth or falsity.

11 21. Paragraph 21 summarizes contents of documents available in the record which
12 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
13 reason it is without sufficient information as to truth or falsity.

14 22. Paragraph 22 summarizes contents of documents available in the record which
15 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
16 reason it is without sufficient information as to truth or falsity.

17 23. Weitz denies the allegations in Paragraph 23 for the reason it is without sufficient
18 information as to truth or falsity.

19 24. Weitz admits it is a member/shareholder of MHID and affirmatively alleges
20 Weitz holds a beneficial interest in water rights held by MHID which describe its lands. Weitz
21 denies the remaining portions of Paragraph 24 for the reason it is without sufficient information
22 as to the allegation's truth or falsity.

23 25. Paragraph 25 summarizes contents of documents available in the record which
24 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
25 reason it is without sufficient information as to truth or falsity.



1 26. Paragraph 26 summarizes contents of documents available in the record which
2 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
3 reason it is without sufficient information as to truth or falsity.

4 27. Weitz denies that no claim was filed regarding the beneficial use of water as
5 described under Water Right No. 61-248. The remaining portion of Paragraph 27 summarizes
6 contents of documents available in the record which speak for themselves. To the extent a
7 response is required, Weitz denies the allegations for the reason it is without sufficient
8 information as to the allegation's truth or falsity.

9 28. Paragraph 28 summarizes contents of documents available in the record which
10 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
11 reason it is without sufficient information as to truth or falsity.

12 29. Paragraph 29 summarizes contents of documents available in the record which
13 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
14 reason it is without sufficient information as to truth or falsity.

15 30. Paragraph 30 summarizes contents of documents available in the record which
16 speak for themselves. To the extent a response is required, Weitz denies the allegations for the
17 reason it is without sufficient information as to truth or falsity.

18 31. Paragraph 31 summarizes contents of legal documents which speak for
19 themselves. To the extent a response is required, Weitz denies the allegations for the reason it is
20 without sufficient information as to truth or falsity.

21 32. As to Paragraph 32, Weitz admits that the neither the Deadline Order nor Closure
22 Order listed Water Right No. 61-248.

23 33. Paragraph 33 summarizes contents of legal documents which speak for
24 themselves. To the extent a response is required, Weitz denies the allegations for the reason it is
25 without sufficient information as to truth or falsity.
26



1 34. Paragraph 34 summarizes contents of legal documents which speak for
2 themselves. To the extent a response is required, Weitz denies the allegations for the reason it is
3 without sufficient information as to truth or falsity.

4 35. Paragraph 35 summarizes contents of legal documents which speak for
5 themselves. To the extent a response is required, Weitz denies the allegations for the reason it is
6 without sufficient information as to truth or falsity.

7 36. Paragraph 36 summarizes contents of legal documents which speak for
8 themselves. To the extent a response is required, Weitz denies the allegations for the reason it is
9 without sufficient information as to truth or falsity.

10 37. Paragraph 37 summarizes contents of legal documents which speak for
11 themselves. To the extent a response is required, Weitz denies the allegations for the reason it is
12 without sufficient information as to truth or falsity.

13 38. Paragraph 38 summarizes contents of legal documents which speak for
14 themselves. To the extent a response is required, Weitz denies the allegations for the reason it is
15 without sufficient information as to truth or falsity.

16 39. Paragraph 39 summarizes contents of legal documents which speak for
17 themselves. To the extent a response is required, Weitz denies the allegations for the reason it is
18 without sufficient information as to truth or falsity.

19 40. Weitz admits that MHID sent a letter regarding annexation into the City of
20 Mountain Home in 2019 containing a statement regarding Water Right No. 61-248 but denies the
21 remaining allegations in Paragraph 40.

22 41. Paragraph 41 summarizes contents of legal correspondence which speaks for itself
23 and affirmatively alleges that the letter was misdated.

24 42. As to Paragraph 42, Weitz admits it received water delivery from MHID during
25 the 2020 irrigation season but denies MHID fully satisfied its water delivery obligations for the
26 Weitz property.

1 43. Paragraph 43 requests a speedy hearing pursuant to I.R.C.P. 57(a) so that no
2 response is required.

3 **V. CLAIMS FOR RELIEF**

4 **Count 1 - Declaratory Ruling that Water Right 61-248 Ceased to Exist and Is Disallowed**
5 **With Prejudice.**

6 44. As to Paragraph 44, Weitz incorporates by reference and realleges its response to
7 paragraphs 1-43.

8 45. Paragraph 45 summarizes contents of legal documents which speak for
9 themselves. To the extent a response is required, Weitz denies the allegations for the reason it is
10 without sufficient information as to truth or falsity.

11 46. Paragraph 46 summarizes legal conclusions to which no response is required but
12 to the extent a response is required, Weitz denies the allegations.

13 47. Paragraph 47 summarizes legal conclusions to which no response is required but
14 to the extent a response is required, Weitz denies the allegations.

15 48. Paragraph 48 summarizes legal conclusions to which no response is required but
16 to the extent a response is required, Weitz denies the allegations.

17 49. Weitz denies the allegations contained in Paragraph 49 of the Petition.

18 **Count 2 - Declaratory Ruling That The Contract Is Fully Satisfied**

19 50. As to Paragraph 50, Weitz incorporates by reference and realleges its response to
20 paragraphs 1-49.

21 51. Weitz denies the allegations contained within Paragraph 51.

22 52. Weitz denies the allegations contained within Paragraph 52.

23 53. Weitz admits water delivery under Water Right No. 61-248 was combined with
24 other water use rights to form Water Right No. 61-10419. Weitz denies the remaining allegations
25 contained within Paragraph 53.



54. Paragraph 54 summarizes legal conclusions to which no response is required. To the extent a response is required, Weitz denies the allegations.

55. Paragraph 55 summarizes legal conclusions to which no response is required. To the extent a response is required, Weitz denies the allegations.

VI. MHID'S PRAYER FOR RELIEF

56. As to Paragraph 1 of MHID's Prayer for Relief, Weitz denies that MHID is entitled to a declaratory judgment finding Water Right No. 61-248 was disallowed and is no longer a valid water right by operation of the *Final Unified Decree*.

57. Weitz admits that the right to water delivery under Water Right No. 61-248 was combined with other water use rights to form Water Right No. 61-10419. Weitz denies MHID is entitled to a declaratory judgment as to the remaining requests contained within Paragraph 2.

58. Paragraph 3 states a legal conclusion to which no response is required and denies the same.

59. Paragraph 4 states a legal conclusion to which no response is required and denies the same.

60. Paragraph 5 states a legal conclusion to which no response is required and denies the same.

DATED this 15th day of December 2020.

SCHROEDER LAW OFFICES, P.C.

Paul Grodz

Laura A. Schroeder, ISB #3799
Attorney for Weitz & Company, Inc.



CERTIFICATE OF MAILING

I hereby certify that on December 15, 2020, I caused a true and correct copy of the foregoing ***RESPONSE TO VERIFIED PETITION FOR DECLARATORY JUDGMENT*** to be mailed with sufficient first-class postage to the following:

Chris M. Bromley
Candice M. McHugh
McHugh Bromley, PLLC
380 S. 4th Street, Suite 103
Boise, ID 83702
*Attorney for Mountain Home Irrigation
District*

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

United States Department of Justice
Environment & Natural Resources Division
550 W Fort St., MSC 033
Boise, ID 83724

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720-0098

Dated this 15th day of December, 2020.



Laura A. Schroeder, ISB # 3799
James Browitt, ISB #9016
Schroeder Law Offices, P.C.
1915 N.E. Cesar Chavez Blvd.
Portland, Oregon 97212
PHONE – (503) 281-4100
FAX – (877) 600-4971
counsel@water-law.com
Attorneys for Weitz & Company, Inc.,

